

S.B.Civil Writ Petition NO.318/2005

LRs. Of Kanhaiya Lal vs. LRs. Of Bhanwar Lal & Anr.

DATE OF ORDER : - 21.4.2005

HON'BLE MR. PRAKASH TATIA,J.

Mr. RK Thanvi, for the petitioners.

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Heard learned counsel for the petitioners.

The petitioners are aggrieved against the order dated 2.9.2002 by which the petitioners' application under Order 6 Rule 17 CPC was rejected by the trial court.

The petitioners to challenge the order dated 2.9.2002 preferred this writ petition on 23.8.2004. The petition was filed with defects which were pointed out by Registry and the same were removed in the year 2005. This Court on 2.3.2005 pointed out that the petition apparently suffers from gross delay and there is no explanation in this regard given by the petitioners in the writ petition.

Learned counsel for the petitioners sought time to explain the delay in filing the writ petition. No reply to the objection or affidavit has been filed by the petitioner after the order dated 2.3.2005. However, learned counsel for the petitioners submits that when there is

a patent illegality, then the Court can interfere in the matter even when there is delay.

The Courts can interfere in an order in a given case does not mean that it explains the delay and laches of the petitioners, therefore, nothing has been about the delay in filing the writ petition, therefore, the writ petition deserves to be dismissed solely on this ground.

Apart from the above, it is clear that the original suit was filed in the year 1981. The petitioners' predecessor expired and the petitioners without seeking any leave of the Court, submitted written statement before the trial court and that written statement was taken out of the record by the order of this Court passed in S.B. Civil Revision Petition No.1490/1999 decided on 4.2.2002. This Court while deciding the above revision petition observed that what mode is available to the petitioners for taking pleas which they want to take, this Court is not commenting anything. Despite the order of this Court in the year 2002, the petitioners have preferred the present writ petition in the year 2004. This clearly reveals that the petitioners deliberately filed the writ petition to challenge the impugned order after inordinate delay.

In view of the above discussion, I do not find any reason to

interfere in the impugned order by invoking jurisdiction under Article 227 of the Constitution.

Accordingly, the present writ petition, having no merit, is hereby dismissed.

s.phophaliya/-

(Prakash Tatia), J.